

## General Business Terms and Conditions for the Sale of Spare Parts

### 1. Acceptance of contracts

1.1 Supply contracts are accepted and fulfilled exclusively pursuant to the following terms and conditions. Changes to supply contracts only become binding once they have been confirmed by the seller in writing.

These terms and conditions also apply to all subsequent follow-up orders even if they are not expressly agreed upon again. Deviating standard terms and conditions of the Buyer are invalid in the relationship to the Seller. We hereby object to conflicting confirmations by the Buyer with reference to the Buyer's standard terms and conditions. Furthermore, Incoterms 2020 shall apply. In case DDU clause is agreed, Incoterms 2000 shall apply.

1.2 Supply contracts are only concluded once the Seller issues a written order confirmation. However, the Seller reserves the right to accept a supply contract by fulfilling the order without issuing a confirmation. Acceptance may take place within a commensurate term after receiving the order.

### 2. Costs

Unless otherwise agreed upon in writing, the costs for spare parts shall be borne by the Buyer.

### 3. Scope of supply

3.1 The object of purchase is exclusively determined by the specifications in the order confirmation. Minor deviations and technical improvements do not constitute an infringement of the contract in regards to the supplied products.

3.2 Drawings, illustrations, dimensions, weights or other performance specifications are only binding if this is expressly agreed upon in writing.

### 4. Purchase price, payment terms, delivery term

4.1 The prices and payment terms specified in the order confirmation shall apply. If the Buyer does not receive an order confirmation or the confirmation does not include prices, the list prices of the Seller on the delivery date or, insofar as no valid price list exists, the prices generally charged by the Seller on the delivery date shall apply.

4.2 Unless otherwise specified in the respective order confirmation, all prices are ex works (according to the current version of Incoterms).

4.3 Payments must be made in the same currency as the indicated price on the invoice from Seller.

Notwithstanding contrary instructions of the Buyer, the Seller has the right to apply payments to older debts first. The Seller will inform the Buyer regarding the way the payments were offset. If costs and interest have already accrued, the Seller has the right to settle

payments first to the costs, then to the interest and finally to the principal service.

4.4 The Buyer has no right to retain the purchase price or offset it against counter claims unless the counter claim has been recognized by the Seller or legally established by a decision of the court of jurisdiction.

4.5 Unless extended payment terms are granted in the order confirmation, the purchase price must be transferred to an account of the Seller specified in 4.6 within 30 days of the invoice date, exempt from charges and without deductions. Exceeding the payment terms constitutes a fundamental breach of contract. Irrespective of further legal recourse, the Seller is entitled to late payment interest at the rate permitted by law; the Buyer may offer proof that the actual damage caused by delay was lower; the Seller may offer proof of higher damages.

4.6 Seller's Bank Accounts

a) All payments from Buyer to Seller shall be paid to one of Seller's bank accounts as stated below:

UniCredit Bank AG (Currency EUR)  
IBAN DE06710221820003668622;  
SWIFT/BIC HYVEDEMMXXX

Commerzbank AG (Currency EUR)  
IBAN DE18711400410611118100;  
SWIFT/BIC COBADEFF711

HSBC Trinkaus & Burkhardt AG (Currency EUR)  
IBAN DE19300308800700449009;  
SWIFT/BIC TUBDDEDD

HSBC Trinkaus & Burkhardt AG (Currency USD)  
IBAN DE71300308804700449004;  
SWIFT/BIC TUBDDEDD

Advance Payment and/or Performance Guarantees issued from Seller's bank in favour of the Buyer: Buyer's payments under Advance Payment and/or Performance Guarantees issued by Seller's bank shall be transferred to the bank account as defined in respective Guarantees.

### 5. Delivery, transportation, acceptance, transfer of risk

5.1 Deliveries are ex works insofar as the order confirmation does not include a deviating delivery clause or specify another point of delivery. The transportation of the products to the Buyer as well as the associated formalities are the responsibility of the Buyer unless these duties have been expressly assigned to the Seller pursuant to the delivery clause in the order confirmation.

5.2 The delivery term is specified in the order confirmation. The Seller is not responsible for delivery delays caused by force majeure or by events that significantly impair the ability of the Seller to deliver or make delivery impossible – in particular strikes, lock-outs, official orders etc., including those affecting suppliers of the Seller or their sub-suppliers – even if binding terms and deadlines have been established. In case of such delays, the Seller is authorised to postpone delivery for the duration of the impediment plus a commensurate lead time or to withdraw from the contract in whole or in part insofar as performance is incomplete.

- 5.3 Insofar as performance is incomplete, after establishing a commensurate grace period, the Buyer has the right to withdraw from the contract if the impediment lasts more than three months. The Buyer cannot assert any claims for compensation if the delivery period is extended or the Seller is relieved of its obligations.
- 5.4 If the Buyer incurs damages as a result of a delay which occurred through a fault of the Seller, the Buyer shall be entitled to request delay compensation, excluding any further claims.  
This compensation amounts to 0.5 percent for every full week of delay after a grace period of two weeks, but at the most to a total of 5 percent of the agreed purchase price.
- 5.5 Unless otherwise agreed upon in writing, the Seller has the right to make partial deliveries at any time.
- 5.6 Meeting the delivery obligations on the part of the Seller stringently requires the timely and proper fulfilment of the Buyer's obligations.
- 5.7 If the delivery of products by the Seller is delayed because of a breach of duty on the part of the Buyer, the transfer of risk to the Buyer takes place at the end of the period during the delivery which would have taken place according to the contract without said breach of duty. In the event of default of acceptance by the Buyer, it is the Seller's right to demand compensation for the arising loss (especially compensation for the arising expenses, e.g. costs of storage and financing).

## 6. Taxes

- 6.1 All taxes and dues imposed by the Seller's government up to the point of transfer of cost and risk from the Seller to the Buyer in accordance with the terms of delivery stipulated in this contract the order shall be borne by the Seller.
- 6.2 All other taxes (including income tax, sales tax, etc.) duties, levies, imposts, deductions which are now in force or will be imposed by the Buyer's government (or any authority thereof) shall be borne by the Buyer. This will include the personal income taxes that may be imposed on personnel delegated by the Seller to the plant site.
- 6.3 Buyer shall in any event pay these taxes, duties and fees, including social or other charges of any kind directly to the authorities concerned in Buyer's country and shall solely be responsible for all declarations and statements to the same. Buyer shall hold Seller harmless from all costs or other consequences resulting from the failure on the part of Buyer to pay all of the said taxes, duties, dues and fees as and when due and/or to file the appropriate returns or other statements with the competent offices. To the extent that such returns or statements must be made in the name of the Seller or Seller's personnel, Buyer will nevertheless prepare them in proper and correct manner.  
  
In case customer remits any corporate income tax / withholding tax payment for the seller imposed by the customer's government, customer shall immediately submit to seller an original copy, receipt or certificate issued by the tax authorities.
- 6.4 The prices referred to herein represent net amounts and do not include any Withholding Tax, Business Tax Value Added Tax, Sales Tax, or other Similar Taxes (hereinafter "VAT or Similar Taxes). If applicable, VAT or similar Taxes will be charged by the Seller to the Buyer in addition to the prices.
- 6.5 Each party agrees that any invoices issued pursuant to this contract shall comply with applicable mandatory local taxation laws and regulations.

## 7. Warranty

- 7.1 The Seller warrants that the products are free of defects in materials and workmanship; the warranty period is one year from the date of delivery.
- 7.2 The warranty becomes null and void in case of failure to comply with operating or maintenance instructions of the Seller or if changes are made to the products, parts are replaced or supplies are used that do not correspond to the original specifications. However, the warranty remains in force if the Buyer offers substantiated evidence that the defect would have occurred notwithstanding the actions or omissions of the Buyer described above.
- 7.3 The Buyer has to report defects to the Seller promptly in writing, not later than within one week after receipt of the products. Defects that cannot be ascertained within this term, even upon careful inspection, must be reported to the Seller in writing promptly upon their discovery.
- 7.4 Upon being notified by the Buyer that the products are defective, the Seller may demand, at the Seller's expense and discretion, that:
- a) The defective part or device is sent to Seller for repairs and subsequent return.
- b) The Buyer keeps the defective part or device available and a service technician is sent to the Buyer by the Seller in order to make repairs.
- If the Buyer demands that warranty work be completed at a specific location, the Seller may comply with this demand; in this case parts under warranty will not be billed while time worked and travel costs are billable at the Seller's standard rates.
- 7.5 If the rectification of defects fails twice after a commensurate term, the buyer may choose a reduction in compensation or the rescission of the contract at the Buyer's discretion.
- 7.6 Liability for normal wear is excluded.
- 7.7 Only the Buyer is entitled to warranty claims against the Seller; warranty claims cannot be assigned without the prior written consent of the Seller.
- 7.8 The preceding provisions describe the full extent of the product warranty; to the extent permissible by law, all other warranty claims of any kind are excluded.

## 8. Buyer's Right of Withdrawal Seller's Right of Withdrawal

- 8.1. The Buyer shall be entitled to withdraw from the contract if the Seller becomes definitely unable to carry out the complete contractual work. The same applies in the case of insolvency of the Seller.
- 8.2. If the inability occurs during delay in acceptance or through the Buyer's fault, the latter remains responsible to fulfil his obligations.
- 8.3 The Buyer shall furthermore be entitled to withdraw from the contract if the Seller permits an additional period granted to him for the repair of a defect, for which he is responsible under the regulations of the contract, and this period expired without taking action and through his own fault.
- 8.4 If the Buyer rescinds the contract after confirmation of the order, the Seller shall not be entitled to claim the purchase price. Seller may issue an invoice regarding a cancellation fee for already arisen costs instead if the rescission is not his responsibility and not subject to Force Majeure.

- 8.5 In this case the Seller is entitled to hold back already received payments from the Buyer to set off against arising cancellation fees.
- 8.6 The fee is calculated as a lump sum at the rate of 5% of the purchase price but at least EUR 150. The Seller reserves the right to claim higher fees if higher costs can be proven.
- 8.7 The cancellation of the affected order will become effective from the time when the Buyer has paid the invoiced costs to the Seller.
- 8.8 Any (advance) payment guarantee(s) shall be returned to the Seller within 5 days.
- 8.9 In the case of unforeseen events as far as these events considerably alter the economic importance or the contents of the service or considerably influence the operation of the Seller's works, and in the case of impossibility of execution realised in retrospect, the Seller shall be entitled to withdraw wholly or partially from the contract as long as adaptation of the contract is not justifiable from an economic point of view.
- 8.10 The Buyer shall not be entitled to claim compensation on account of such withdrawal. If the Seller desires to avail his right of withdrawal he needs to inform immediately the Buyer, even if recently Seller and Buyer agreed on an extension of the delivery period.
- 9. Obstruction of performance, inability to pay, bankruptcy**
- 9.1 Insofar as the Seller is not responsible for the non-performance of its obligations because non-performance is based on an obstacle beyond the control of the Seller, the Buyer cannot demand compensation nor invoke any other legal remedies.
- 9.2 The Seller is only liable for its suppliers to the extent like he is liable for non-performance by another third party who he employed for the full or partial performance of the contract.
- 9.3 If the Buyer suspends or discontinues its payments or if an application for insolvency proceedings is submitted in regards to the Buyer's business operations or the commencement of comparable proceedings is initiated pursuant to the laws applicable to the Buyer, the Seller has the right to withdraw from the contract without notice, fully or insofar as performance has not occurred, irrespective of further legal recourse. The same applies in case the Seller becomes aware of other circumstances that cast doubt on the creditworthiness of the Buyer.
- 10. Export control**
- 10.1 The export of the spare parts to the country specified under the respective supply contract and its usage in such country for the purpose communicated to the Seller does - to the best of Seller's knowledge - presently not conflict with the export regulations of Germany and / or the European Community. Any change of such situation before delivery of the spare parts to the specified country will be monitored by Seller and duly communicated to the Buyer.
- 10.2 In the event that any new export rules and/or regulations become effective during execution of a supply contract, this shall constitute a force majeure event. In such event Buyer and Seller will diligently discuss the steps to be taken.
- 10.3 Buyer may in no event re-export the spare parts to any other country in the world without the prior written consent of Seller.
- 11. Defects of title**
- 11.1 The Seller does not guarantee that the products are free of the rights or claims of third parties based on industrial or other intellectual property rights.
- Insofar as the Buyer exports the products, the Buyer bears the sole responsibility for establishing the situation in regards to proprietary rights in the destination country. Insofar as the Seller is aware of proprietary rights to the products in the destination country, the Seller will provide this information to the Buyer in response to a written request.
- 11.2 Notwithstanding the above, the liability for defects of title is limited to a period of two years after delivery of the products (preclusion period) insofar as the Seller did not maliciously conceal the defective title.
- 12. Retention of title**
- The Seller retains the title to the delivered products until the purchase price is paid in full. The Buyer is obligated to take the steps necessary to assure the retention of title – or a comparable security interest in the country of the Buyer's business establishment or another destination country – and to provide proof thereof to the Seller upon request. Failure to comply constitutes a fundamental breach of contract.
- The costs incurred in this regard are borne by the Buyer.
- 13. Obligation to cooperate**
- The parties are mutually obligated to take all reasonable measures required to achieve the purpose of the contract and to refrain from any actions that would impede achieving the purpose of the contract.
- 14. Limitation of liability**
- Claims for compensation based on a positive violation of a contractual obligation or on unlawful acts against the Seller and against its assistants and vicarious agents are excluded unless they are based on intent or gross negligence. This also applies to claims for compensation based on non-performance. In any case, liability is limited to the amount of damages that can be expected when the contract is concluded. The liability of the Seller remains unaffected pursuant to the Product Liability Act also like other claims pursuant to manufacturer's liability.
- 15. Verbal Collateral Agreements**
- Verbal collateral agreements to the contract or these General Conditions for the Sale of Spare Parts shall be effective only if they have been confirmed in detail and in writing by Seller.
- 16. Applicable law, arbitration clause**
- 16.1 The legal relationship between the Seller and Buyer is subject to substantive German law; the application of international civil law is excluded. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 is excluded.
- 16.2 In case of disputes arising from or in connection with the contract, including disputes regarding the valid conclusion of the contract, its legal effectiveness, its amendment or dissolution, both parties will attempt to reach a mutual agreement. Should such an agreement not be reached within one month after one party asks the other party to settle the dispute, all means available

pursuant to the applicable legal regulations may be taken; both parties agree on the sole jurisdiction of the courts in Traunstein, Germany. The Seller also has the right to petition the court of jurisdiction of the Buyer.

The defaulting party will reimburse the other party for all costs, especially court costs and commensurate legal fees, incurred as a result of the breach of contract.

## **17. Miscellaneous**

- 17.1 Memorandums are only effective if they are communicated in writing and in the German or English language. Memorandums may also be communicated by fax or electronically. They become effective upon reaching the recipient or at the point in time when they would have reached the recipient under normal circumstances using the chosen means of communication. Memorandums that reach the Seller on a Sunday, a statutory holiday at the Seller's place of business or on a Saturday only become effective on the following working day.
- 17.2 If individual provisions of the contracts concluded, which are based on these terms of sale, are ineffective or infeasible in whole or in part, the effectiveness of the remaining provisions shall remain unaffected. In this case, the parties agree to replace the ineffective or infeasible provisions with effective and feasible provisions that comes as close as possible to the economic purpose of the ineffective or infeasible provisions. This applies correspondingly in case of gaps in the contracts concluded which are based on these terms of sale.